

1
2
3
4 **INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO**
5

6 **ORDINANCE NO. 694**
7

8 AUTHORIZING THE ISSUANCE AND SALE OF INCORPORATED COUNTY
9 OF LOS ALAMOS, NEW MEXICO INDUSTRIAL REVENUE BONDS
10 (PEBBLE LABS U.S.A., INC., PROJECT), IN ONE OR MORE TAXABLE OR
11 TAX- EXEMPT SERIES IN AN AMOUNT NOT TO EXCEED SIXTY MILLION
12 DOLLARS (\$60,000,000.00) (THE "BONDS") FOR THE BENEFIT OF PEBBLE
13 LABS U.S.A., INC., (THE "COMPANY") FOR THE PURPOSE OF
14 ACQUIRING LAND, BUILDINGS, EQUIPMENT AND INFRASTRUCTURE
15 LOCATED IN LOS ALAMOS COUNTY, NEW MEXICO ("COUNTY");
16 PROVIDING FOR THE PAYMENT OF THE BONDS FROM LEASE
17 PAYMENTS TO BE RECEIVED BY COUNTY PURSUANT TO A LEASE
18 AGREEMENT BETWEEN COUNTY AND PEBBLE LABS U.S.A, INC.;
19 APPROVING FORMS OF A LEASE AGREEMENT, INDENTURE, BOND
20 PURCHASE AGREEMENT AND OTHER PROJECT DOCUMENTS
21 RELATING TO THE BONDS; AND PROVIDING THAT COUNTY SHALL
22 NOT BE PLEDGING ITS FAITH AND CREDIT TO THE PAYMENT OF THE
23 BONDS, PROVIDING THAT THE COMPANY SHALL MAKE CERTAIN
24 PAYMENTS IN LIEU OF TAXES TO COUNTY; APPROVING AND
25 RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION
26 THEREWITH
27

28 **WHEREAS**, the Incorporated County of Los Alamos, New Mexico (the "County") is a
29 legally and regularly created, established, organized and existing county under the general laws of
30 the State of New Mexico with municipal home-rule powers; and

31 **WHEREAS**, the County is authorized by Sections 3-32-1 to 3-32-16, inclusive, and 4-59-1
32 to 4-59-16, inclusive, NMSA 1978, as amended (the "Act"), to acquire industrial revenue projects
33 to be located within the County; and, is authorized to adopt ordinances to provide for the safety,
34 preserve the health, promote the prosperity and improve the morals, order, comfort and
35 convenience of the County and its inhabitants (collectively, the "Act"); and

36 **WHEREAS**, the County has determined that it is in the best interests of the County and its
37 inhabitants to issue its Industrial Revenue Bonds (Pebble Labs U.S.A., Inc. Project), in one or more
38 series in the aggregate principal amount not to exceed sixty million dollars (\$60,000,000) (the
39 "Bonds") to provide funds necessary to acquire land and infrastructure and to acquire and equip
40 scientific laboratories and related facilities located in the County, to be leased to Pebble Labs
41 U.S.A., Inc. (the "Company"), and to defray part or all of the cost of acquiring assets, including

without limitation, reimbursing the Company for any expenditures and costs incurred by the Company for the Project (the "Project") and to pay the costs of issuance of the Bonds; and

WHEREAS, the Bonds will be issued by the County pursuant to the Act and in accordance with the terms of an Indenture (the "Indenture") dated as of July 15, 2019 by and among the County, the Company, the Depositary and the Purchaser of the Bonds as defined in the Indenture; and

WHEREAS, the Purchaser of the Bonds, will purchase the Bonds by paying the purchase price of the Bonds as set forth in the Bond Purchase Agreement; and

WHEREAS, the County is not pledging its faith and credit to the payment of the principal of or the interest on the Bonds;

WHEREAS, the Company has agreed to make certain payments in lieu of taxes ("PILT") to the County for the term of the Bonds; and

WHEREAS, all required authorizations, consents or approvals of any state, governmental body, agency or authority in connection with the authorization, execution and delivery of the Bonds which are required to have been obtained by the date hereof, have been obtained, and which will be required to be obtained prior to the date of the issuance of the Bonds, will have been obtained by such date; and

WHEREAS, the following documents have been prepared in connection with the issuance of the Bonds and have been reviewed by the County's Bond Counsel and are on file with the County Clerk:

- (a) the Indenture;
- (b) Lease Agreement by and between the County and the Company dated as of July 15, 2019 (the "Lease Agreement");
- (c) Bond Purchase Agreement dated as of July 15, 2019; and
- (d) Notice of Intent to Adopt an Ordinance dated May 28, 2019, published May 30, 2019;

1 **WHEREAS**, there is on deposit with the County Clerk the proposed form of Bond
2 Ordinance;

3 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF LOS ALAMOS**
4 **COUNTY, NEW MEXICO:**

5 **SECTION 1.** *Approval of Indenture;* The Indenture substantially in the form presented
6 herewith, with such changes, insertions, deletions and modifications as may be approved by the
7 Chair or Vice Chair of the Council and as may be recommended by the County's Bond Counsel is
8 hereby ratified and approved. All such changes, insertions, deletions and modifications shall be
9 deemed to have been approved by the County upon execution and delivery of the Indenture, such
10 execution and delivery to be conclusive evidence of such approval. All capitalized terms in this
11 Ordinance shall have the meanings set forth in the Indenture unless otherwise defined herein.

12 **SECTION 2.** *Authorization of the Bonds.* The Council hereby authorizes and approves the
13 issuance of the Bonds for the purposes of acquiring and equipping the Project and for defraying
14 part or all of the cost of acquiring assets, including without limitation, reimbursing the Company
15 for any costs and expenses incurred by the Company for the Project, and paying the costs of
16 issuance of the Bonds including, but not limited to, the reimbursement of certain costs incurred by
17 the Company prior to the adoption of this Ordinance. The Bonds shall be issued under the terms
18 and conditions of the Indenture including provisions for the payment of principal of and interest
19 on the Bonds, and shall be signed by or bear the facsimile signature of the Chair of the Council, or
20 the Vice Chair acting in her absence, and the County Clerk, or a deputy County Clerk acting in her
21 absence. All Bonds issued hereunder shall be issued no later than July 1, 2024, and shall not mature
22 later than July 1, 2044.

23 **SECTION 3.** *Approval of Lease Agreement.* The Chair, or the Vice Chair, of the Council
24 is hereby authorized and directed to execute and deliver the Lease Agreement on behalf of the
25 County in substantially the form presented herewith, with such changes, insertions, deletions and
26 modifications as may be approved by the Chair, or the Vice Chair, of the Council and as may be

recommended by the County's Bond Counsel. All such changes, insertions, deletions and modifications shall be deemed to have been approved by the County upon execution and delivery of the Lease Agreement, such execution and delivery to be conclusive evidence of such approval. The Lease Agreement requires the Company to maintain the Project in good repair and condition (excepting reasonable wear and tear) and carry proper insurance with respect to the Project. The Lease Agreement requires the Company to make payments sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds as principal, redemption premium and interest become due, as well as certain payments in lieu of taxes as agreed to by the Company and County.

The County finds that the maximum amount necessary in each year, required of the Company to pay the principal and interest on the Bond, assuming the initial issuance of the Bond as of July 15, 2019, in the maximum aggregate principal amount of \$12,500,000, bearing interest at the rates provided in the Indenture as more particularly stated in Appendix A which is attached hereto and incorporated herein by reference, is sufficient to finance the Project and that the County further finds that no reserve fund is necessary in addition to the semi-annual payments of principal and interest on the Bond as provided in the Indenture, the Lease and the Bond Purchase Agreement. The Council further finds that the Basic Rent and Additional Payments made by the Company to the County under the Lease Agreement are sufficient to pay the principal of and interest on the Bond used to finance the Project.

It shall not be necessary to deposit any amount in a debt service reserve fund or repair and replacement reserve fund for the maintenance of the Project Property (as defined in the Indenture).

SECTION 4. *Approval of Bond Purchase Agreement.* The Chair of the Council is hereby authorized and directed to execute and deliver the Bond Purchase Agreement on behalf of the County in substantially the form presented herewith, with such changes, insertions, deletions and modifications as may be approved by the Chair of the Council and as may be recommended by Bond Counsel. All such changes, insertions, deletions and modifications shall be deemed to have

1 been approved by the County upon execution and delivery of the Bond Purchase Agreement, such
2 execution and delivery to be conclusive evidence of such approval.

3 **SECTION 5. General Authorization.** The Council hereby authorizes, empowers and
4 directs each of the officers (including the Council officers) and employees of the County, and its
5 counsel, to execute, carry out or cause to be carried out, and to perform, such obligations of the
6 County and such other actions as they, in consultation with Bond Counsel and advisors to the
7 County in connection with the issuance, sale and delivery by the County of its Bonds, shall
8 consider necessary or advisable in connection with this Ordinance, including but not limited to the
9 Indenture, the Lease Agreement, and such other documents and any amendments thereto, deemed
10 necessary, and for the issuance, sale and delivery of the Bonds.

11 **SECTION 6. Severability.** If any one or more provisions of this Ordinance should be
12 determined by a court of competent jurisdiction to be contrary to law, any such provision shall be
13 deemed separable from the remaining provisions hereby and the invalidity or unenforceability
14 thereof shall in no way affect the validity or the enforceability of the other provisions of this
15 Ordinance.

16 **SECTION 7. No Recourse and Liability.** All covenants, stipulations, obligations and
17 agreements of the County contained in this Ordinance, and in the documents hereby approved and
18 authorized for execution, shall be deemed to be the covenants, stipulations, obligations and
19 agreements of the County, and all such covenants, stipulations, obligations and agreements shall
20 be binding upon the County, and, except as otherwise provided in this Ordinance and such
21 documents, all rights, powers and privileges conferred, and duties and liabilities imposed, upon
22 the County by the provisions of this Ordinance, and in the documents hereby approved and
23 authorized for execution, shall be exercised or performed by the Council; provided that no
24 covenant, stipulation, obligation or agreement herein contained or contained in any document
25 hereby approved and authorized for execution shall be deemed to be a covenant, stipulation,
26 obligation or agreement of any officer, director, member, or employee of the County in his

individual capacity, and neither the members of the Council nor any officials executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 8. *Approval of Indemnification.* The Council specifically requires that the Lease contain provisions relating to indemnification which provide that the Company shall indemnify and hold harmless the County and its County Council, officials, employees and agents against liability to the Company, or to any third parties, that may be asserted against the County or its County Council, officials, members, officers, employees or agents with respect to the County's ownership of the Project Property or the issuance of the Bonds and arising from the condition of the Project Property or the acquisition, installation and operation of the Project Property by the Company, except to the extent Section 56-7-1 NMSA 1978 may preclude such indemnity, and except claims for any loss or damage to the extent caused by the gross negligence or willful misconduct of the County or its County Council, or any official, employee or agent of the County.

SECTION 9. *Ordinance Irrepealable.* After the Bonds are issued, this Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as provided in the Indenture or there has been a defeasance as provided in the Indenture.

SECTION 10. *Repealer Clause.* All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

SECTION 11. *Effective Date.* This ordinance becomes effective thirty (30) days after Recordation by the County Clerk.

SECTION 12. *General Summary for Publication.* Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

NOTICE OF ADOPTION OF ORDINANCE No. 694

NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter contained in Ordinance No. 694 duly adopted and approved by the Council of County Councilors (the “Governing Body”) of Los Alamos County, New Mexico (the “County”) on June 11, 2019. A complete copy of Ordinance No.694 is available for public inspection during the normal and regular business hours of the County Clerk, 1000 Central Avenue, Los Alamos, New Mexico, 87544.

The Title of the Ordinance is:

AUTHORIZING THE ISSUANCE AND SALE OF INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO INDUSTRIAL REVENUE BONDS (PEBBLE LABS U.S.A., INC., PROJECT), IN ONE OR MORE TAXABLE OR TAX- EXEMPT SERIES IN AN AMOUNT NOT TO EXCEED SIXTY MILLION DOLLARS (\$60,000,000.00) (THE “BONDS”) FOR THE BENEFIT OF PEBBLE LABS U.S.A., INC., FOR THE PURPOSE OF ACQUIRING LAND, BUILDINGS, EQUIPMENT AND INFRASTRUCTURE LOCATED IN LOS ALAMOS COUNTY, NEW MEXICO (“COUNTY”); PROVIDING FOR THE PAYMENT OF THE BONDS FROM LEASE PAYMENTS TO BE RECEIVED BY COUNTY PURSUANT TO A LEASE AGREEMENT BETWEEN COUNTY AND PEBBLE LABS U.S.A, INC.; APPROVING FORMS OF A LEASE AGREEMENT, INDENTURE, BOND PURCHASE AGREEMENT AND OTHER PROJECT DOCUMENTS RELATING TO THE BONDS; AND PROVIDING THAT COUNTY SHALL NOT BE PLEDGING ITS FAITH AND CREDIT TO THE PAYMENT OF THE BONDS; APPROVING AND RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH

The following is a general summary of the subject matter contained in Ordinance No.694:

Preamble recites such matters as the existence of the County: the authority of the County to issue bonds under the New Mexico law; the determination of the County to issue its Los Alamos County, New Mexico Industrial Revenue Bonds, (Pebble Labs U.S.A., Inc. Project), in one or more series, in the aggregate principal amount not to exceed \$60,000,000 (the “Bonds”) to provide funds for the purposes of acquiring land, buildings, equipment, and infrastructure for the purpose of operating scientific laboratories located in the County, to be leased to Pebble Labs U.S.A., Inc.,

(the “Company”), and for defraying part or all of the cost of acquiring land, buildings, equipment, and infrastructure, including without limitation, reimbursing the Company for any costs incurred by the Company (the “Project”), and to pay the costs of issuance of the Bonds; to be sold to the Holder and at the price to be set in the Indenture; recites that the County is not pledging its faith and credit to the payment of the principal of or interest on the Bonds; recites that all required governmental authorizations or approvals have been obtained or will be obtained by the date of issuance of the Bonds; recites that project documents have been reviewed by Bond Counsel; recites that the form of Bond Ordinance is on deposit with the County Clerk.

SECTION 1 approves the Indenture.

SECTION 2 authorizes the issuance of the Bonds.

SECTION 3 approves the Lease Agreement including the Company's payment in lieu of taxes to the County.

SECTION 4 approves the Bond Purchase Agreement.

SECTION 5 is the General Authorization provision which directs the officers of the Council and employees of the County to execute all required documents.

SECTION 6 is the severability clause.

SECTION 7 provides that no individual member of the Council or employee of the County shall be personally liable on the Bonds.

SECTION 8 provides that the Lease Agreement contains provisions relating to the indemnification by the Company of the County.

SECTION 9 provides that the Ordinance is not repealable by the County so long as there are Bonds outstanding.

SECTION 10 provides that all inconsistent resolutions and ordinances are repealed.

1 **SECTION 11** provides that the Ordinance shall be in full force and effect thirty (30) days
2 after recordation.

3 **SECTION 12** provides for a summary of the Ordinance to be published.

4 COMPLETE COPIES OF THE ORDINANCE ARE ON FILE IN THE OFFICE OF THE COUNTY CLERK,
5 1000 CENTRAL AVENUE, LOS ALAMOS, NEW MEXICO, 87544, AND ARE AVAILABLE FOR
6 INSPECTION OR PURCHASE DURING REGULAR OFFICE HOURS. THIS NOTICE ALSO CONSTITUTES
7 COMPLIANCE WITH SECTIONS 6-14-4 THROUGH 6-14-7, NMSA 1978.

8 **WITNESS** my hand and seal of the County this 11th day of June, 2019.

9 **(SEAL)**

10
11
12 _____
13 Naomi D. Maestas,
14 Los Alamos County Clerk

15 **(End of Form of Ordinance for Publication)**
16
17
18
19
20
21
22
23

[Remainder of page intentionally left blank]

Passed and Adopted this 11th day of June, 2019.

INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

SARA C. SCOTT, CHAIR

PETE SHEEHEY, VICE CHAIR

DAVID IZRAELEVITZ, MEMBER

ANTONIO MAGGIORE, MEMBER

JAMES ROBINSON, MEMBER

RANDALL RYTI, MEMBER

KATRINA SCHMIDT, MEMBER

[SEAL]

Attest:

Naomi D. Maestas, Los Alamos County Clerk

Approved as to Form

, Bond Counsel

1

APPENDIX A

Assumed Issue Date: 07/15/19
 Amount at Issuance: \$ 12,500,000.00
 Maturity Date: 07/15/39

* Subject to final closing date and purchase price adjustments

IRB Debt Service Requirements for Pebble Labs*

Date	Principal Repayment	Annual Rate (%)	Interest Payment	Principal & Interest Payment	Annual Principal & Interest
01/15/20	\$ -	3.500%	218,750.00	\$ 218,750.00	
07/15/20	0	3.500%	218,750.00	218,750.00	\$ 437,500.00
01/15/21			218,750.00	218,750.00	
07/15/21	0	3.500%	218,750.00	218,750.00	437,500.00
01/15/22			218,750.00	218,750.00	
07/15/22	0	3.500%	218,750.00	218,750.00	437,500.00
01/15/23			218,750.00	218,750.00	
07/15/23	735,294.12	3.500%	218,750.00	954,044.12	1,172,794.12
01/15/24			205,882.35	205,882.35	
07/15/24	735,294.12	3.500%	205,882.35	941,176.47	1,147,058.82
01/15/25			193,014.71	193,014.71	
07/15/25	735,294.12	3.500%	193,014.71	928,308.82	1,121,323.53
01/15/26			180,147.06	180,147.06	
07/15/26	735,294.12	3.500%	180,147.06	915,441.18	1,095,588.24
01/15/27			167,279.41	167,279.41	
07/15/27	735,294.12	3.500%	167,279.41	902,573.53	1,069,852.94
01/15/28			154,411.76	154,411.76	
07/15/28	735,294.12	3.500%	154,411.76	889,705.88	1,044,117.65
01/15/29			141,544.12	141,544.12	
07/15/29	735,294.12	3.500%	141,544.12	876,838.24	1,018,382.35
01/15/30			128,676.47	128,676.47	
07/15/30	735,294.12	3.500%	128,676.47	863,970.59	992,647.06
01/15/31			115,808.82	115,808.82	
07/15/31	735,294.12	3.500%	115,808.82	851,102.94	966,911.76
01/15/32			102,941.18	102,941.18	
07/15/32	735,294.12	3.500%	102,941.18	838,235.29	941,176.47
01/15/33			90,073.53	90,073.53	
07/15/33	735,294.12	3.500%	90,073.53	825,367.65	915,441.18
01/15/34			77,205.88	77,205.88	
07/15/34	735,294.12	3.500%	77,205.88	812,500.00	889,705.88
01/15/35			64,338.24	64,338.24	
07/15/35	735,294.12	3.500%	64,338.24	799,632.35	863,970.59
01/15/36			51,470.59	51,470.59	
07/15/36	735,294.12	3.500%	51,470.59	786,764.71	838,235.29
01/15/37			38,602.94	38,602.94	
07/15/37	735,294.12	3.500%	38,602.94	773,897.06	812,500.00
01/15/38			25,735.29	25,735.29	
07/15/38	735,294.12	3.500%	25,735.29	761,029.41	786,764.71
01/15/39			12,867.65	12,867.65	
07/15/39	735,294.12	3.500%	12,867.65	748,161.76	761,029.41
	\$ 12,500,000.00		\$ 5,250,000.00	\$ 17,750,000.00	\$ 17,750,000.00

2